Case No: HQ8X01100

Neutral Citation Number: [2009] EWHC 1423 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 25 February 2009

BEFORE:

MR JUSTICE BLAKE

BETWEEN:

Claimant

WILLIAM HAMMERTON

- and -

Defendant

MINISTRY OF JUSTICE

Kris Gledhill **(instructed by Guile Nicholas Solicitors)** for the Claimants

Tim Morshead **(instructed by the Treasury Solicitor)** for the Defendants

---

APPROVED JUDGMENT

Crown Copyright ©

Digital Transcript of Wordwave International, a Merrill Communications Company
101 Finsbury Pavement London EC2A 1ER
Tel No: 020 7422 6131 Fax No: 020 7422 6134
Web: www.merrillcorp.com/mls Email: mlstape@merrillcorp.com
(Official Shorthand Writers to the Court)

Folios: 161
Words: 11,621

MR JUSTICE BLAKE:

Introduction.

1. In this action the claimant seeks damages from the defendant, the Ministry of Justice, by way of compensation for his detention for six weeks in Wandsworth Prison from 27 July 2005. He had been committed to prison for three months for contempt of court by His Honour Judge Collins sitting at the Central London Civil Justice Centre. Much later, on 23 March 2007, that finding of contempt and the sentence of three months was set aside on appeal by the Court of Appeal. That court concluded that as an unrepresented party in family proceedings he had not had a fair hearing of the contempt issue.

2. These proceedings for damages were instituted on 20 March 2008 and the claimant's case can be summarised in the following five propositions. (1) He can sue the defendant Ministry for damages for the tort of wrongful imprisonment following the judge's order and/or (2) he can sue the Ministry for damages for breach of his right to a fair trial, guaranteed by article 6(1) of the European Convention on Human Rights and his right to a remedy under section 7(1)(a) of the Human Rights Act 1998, and/or (3) he can sue the Ministry for damages for breach of his right to liberty protected by article 5(1) of the ECHR, and (4) time runs for beginning the proceedings only from the date of the Court of Appeal decision allowing his appeal on human rights ground and this claim is therefore brought within the 12-month time limit provided for by section 7(5) of the Human Rights Act, and/or (5) it is equitable for the court to permit a longer period for the claim to be brought in all the circumstances of the case.

3. The defendant Ministry disputes each of these contentions and, although this is the trial of the action itself, submits that the limitation point is a complete answer to these matters and so logically it should be considered first.

4. The essential facts are agreed and the court has heard no oral evidence in the case but it is necessary to set out the history of the matter in a little greater detail before going on to consider the submissions of the parties.

The Factual Background.

5. On 9 January 2004 the claimant made an application in his local County Court for contact to see and have contact with the two younger children, then aged 9 and 7, of his marriage that had broken down. For reasons that are unclear and were the subject of critical comment by Wall LJ in the Court of Appeal decision, to which reference has already been made, the contact application could not be determined promptly in the local County Court. After a period of delay it was transferred to the Central London Civil Justice Centre for determination. In the meantime the wife of the claimant, or former wife, who had complained of intermittent violence at the hands of the claimant during the marriage, had sought protection from the courts from harassment and related abuse alleged to have been committed by him.

6. On 21 December 2004 the claimant gave an undertaking to the Wandsworth County Court in the following terms:

> "Not to contact, or communicate with, the applicant, the applicant's mother or father, nor her

solicitors in any way whatsoever, neither send or deliver to them any package or other missive, and shall not encourage any other person to do so except through his own solicitors and to be bound by these promises until 21st December 05."

7. Again, as Wall LJ was subsequently to point out in the Court of Appeal, that undertaking was far too wide and should never have been accepted by the district judge. In particular, the terms preventing any communication with the wife's solicitors were wholly impracticable in a case where, as turned out to be the case, this claimant ended up representing himself in the Family proceedings.

8. On 23 February 2005 the district judge granted an injunction to the wife preventing the claimant from using or threatening violence or encouraging anyone else to do so and from intimidating, harassing or pestering her. On 6 July 2005 the wife through her solicitors issued a notice for the claimant to show cause why he should not be committed for contempt of court. This was based on a number of discrete allegations, I believe eight in all, that dealt with abusive calls to the wife's solicitors in May and June that had been carefully recorded by those solicitors, sending letters to the wife, visiting the wife's elderly father and, particularly on the last occasion, being abusive and violent. It appears that at around this time the claimant had also been arrested by the police and was on bail for a public order offence connected with the problems he was having with members of his former family and there were police bail terms also that had given rise to disputes.

9. There was provided to the court at the trial of this matter the unapproved judgment of His Honour Judge Collins. It appears that that judgment had not been before the Court of Appeal, for reasons which we will come to, and I am conscious that the Court of Appeal had set aside the decision of His Honour Judge Collins on the question of contempt and so one necessarily must approach anything in that judgment with some degree of caution, but it appears from the evidence rehearsed in that unapproved judgment that there had been placed before His Honour Judge Collins material to suggest that the claimant had on a number of occasions been abusive and lost his temper and had been abusive in particular with the CAFCASS court reporter who had been assigned to prepare a family report on the issue of his contact with his children. If the substance of these allegations were true, then, even making every allowance for the emotional stress of the unresolved contact proceedings and the probable alcohol dependency of the claimant, he was behaving in a very unpleasant and menacing way and appeared to have been in persistent breach of undertakings, court orders and bail conditions.

10. On 26 July 2005 the case came on before His Honour Judge Collins. The wife was represented by a solicitor and counsel. The claimant was unrepresented. There appears to have been no inquiry into why that was and whether the claimant wanted legal representation. From the Court of Appeal judgment it appears that at some point during the two-day hearing it became apparent that there were representations being considered in the near future by the Legal Services Commission about some aspect of legal representation for the claimant. However, it is unclear precisely what was being considered in the sense of which proceedings they would cover and whether the defendant had previously been represented in the Family proceedings and precisely why he was not represented on 26 July. Unfortunately the claimant's statement made for the purpose of the present proceedings does not address any of those matters and so the court is none the wiser.

11. His Honour Judge Collins decided to deal with both the claimant's contact application, outstanding now for a considerable period of time, and the wife's application for committal together in a single hearing. He delivered judgment on 27 July and, having first considered the question of contact, which he limited to postal contact, he went on to conclude that the claimant was in contempt of court and imposed the sentence of three months' imprisonment, which meant that he had to serve six weeks. He was released from that sentence on 9 September 2005. The claimant wanted to appeal against this decision but had some substantial difficulty in finding a lawyer who would act for him in such an appeal. He had understood that the solicitors who he had instructed to deal with his criminal charge on the public order matter that was heard in October 2005 had agreed to act in the contempt appeal. There is a dispute about whether they had so agreed to act. The solicitors wrote to the claimant saying that they were only acting in criminal proceedings and not the civil proceedings in which the contempt order was made. The claimant indicates that he was promised that they would assist him in respect of his detention.

12. The claimant's statement for these proceedings is largely concerned with the telephone calls he made to local solicitors and the Law Society about the difficulty in obtaining legal representation. I add by way of parentheses that in answer to a question posed by the court to the defendant Department it appears that the Office of the Official Solicitor is now solely concerned with people under disabilities and has no function in progressing applications by people held in contempt of court.

13. In any event it appears that it was not until after his release from prison on 9 September that a notice of appeal appealing against the order of July was lodged in the Court of Appeal. It may be that that was done on 14 September, but even that is not precisely clear. The notice is not in the court papers. In December 2005 he obtained the assistance of solicitors to help him to pursue that appeal but those solicitors are not the firm that acts for the claimant in respect of the present proceedings. Even at this stage things did not run smoothly with respect to the administration of justice. The court would have expected appellate proceedings in cases of contempt to be afforded due priority, even in the case where the sentence has already been served, and it is alarming to note that the case took 18 months from the lodging of the appeal notice to determination. Unsurprisingly the Court of Appeal was itself concerned about this and it appears that much of the delay was due to the fact that there was no tape recorded transcript of the judgment in the county court and the records of the proceedings were missing vital parts, in particular the part where the learned judge moved from his conclusions on contempt being made out to consideration of sentence.

14. What was before the Court of Appeal was simply a note of the judgment that somebody had taken but that was not the unrevised transcript that has now been produced for the purposes of these proceedings by the defendant Ministry, as has already been indicated.. Although the court is glad to know that there was such a transcript that has been produced, again it remains a bit of a mystery as to why there was difficulty in getting that document before the Court of Appeal in the first place. Predictably when His Honour Judge Collins was asked to comment upon the note of the judgment that was before the Court of Appeal he indicated he was unable to remember much or contribute anything sensible to that note.

The hearing before the Court of Appeal

15. Although the notice of appeal to the Court of Appeal is not in the papers in the court bundle, in the light of the prominence that it played in the subsequent judgment of the court, it is quite likely that the grounds of appeal included a reference to a Human Rights Act point and particularly the requirements of article 6 of the ECHR being taken on behalf of the claimant appellant. The defendant Ministry was not served with that notice of appeal and nor did the law require it to be. That is because there was no claim for damages being made as part of that appeal and nor was a declaration of incompatibility being sought. Human rights claims made in appeals do not require service on central government or central government to be joined to assist the court.

16. The wife did not appear in response to the appeal, perhaps unsurprisingly in the light of the lapse of time since the events to which it related, and therefore essentially it proceeded unopposed when it was considered by a two-judge court consisting of Wall LJ and Moses LJ. The Court of Appeal was extremely critical of the procedure that had been adopted that had led to the claimant's sentence of imprisonment. It observed that by section 6(3) of the Human Rights Act it is unlawful for a public authority, including a court, to act in a way that is incompatible with a person's human rights. It observed that there is a general injunction in the Practice Direction (Family Provisions: Contempt) [2001] 1 WLR 1253, paragraph 2, to ensure that committals are conducted in a way compatible with human rights. The ECHR provides:

> "6.1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...
>
> "6.2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> "6.3. Everyone charged with a criminal offence has the following minimum rights:
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
> (b) to have adequate time and facilities for the preparation of his defence;
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

17. Essentially the Court of Appeal found that there were three main errors in this case. The first was the failure to inquire why the claimant was not represented, whether he wanted legal representation and, depending upon those answers, any further inquiry as to whether representation could be provided if the committal proceedings were adjourned for a short time. The court concluded that in totality that absence of inquiry undermined the claimant's right to legal assistance under article 6(3)(c) of the ECHR.

18. The second main ground of complaint was that the joinder of the committal proceedings and the contact order undermined the burden of proof in respect of the committal proceedings and the defendant's right not to give evidence in the hearing of what case law had already established to be considered to be a criminal charge for the purposes of article 6(1) (see Re K (Contact Committal Order) [2003] 1 FLR 277 paragraph 21).

19. The third main area of criticism was the fact that the record of proceedings indicated no opportunity was afforded to the claimant to mitigate before sentence was passed and again there was no reflection on whether even at that stage the case should be adjourned for legal representation during the process of sentencing and hearing submissions upon it. That defect caused Moses LJ to describe the process of sentencing as "fatally flawed", although Wall LJ noted that no final conclusion could be reached as to what had happened in the absence of a full record of proceedings.

20. There were other failures noted in the judgment of both experienced judges in the Court of Appeal, some of which may have been considered to be the consequence of the absence of legal representation and the requirement of strict proof of allegations of breach of court orders,. This in part the wife relied upon hearsay evidence to prove her case. There were some pointers in the judgment to the difference a lawyer could have made to some of the conduct being found proved and criticisms in respect of at least one head of the allegations when contrasted with a police report of the incident. Further, all of the foregoing and anything else that a lawyer could have contributed, might have made a difference to the length of the sentence for contempt of court

21. However, the Court of Appeal was not concerned with reaching any conclusions on an assessment of causal link between the unfairness suffered in the procedure and the breach of the article 6 rights that were found to have taken place and the consequent detention of this claimant. The court did note that the question of the absence of legal representation in committal proceedings where imprisonment was a real likely outcome was considered to be a matter of concern in the previous leading judgment of the Court of Appeal (see the case of Re K (cited above) where Hale LJ gave the principal judgment). It can however be noted that in that case the absence of legal representation by a mother facing committal proceedings in respect of breach of contact orders was a matter of acute concern from the trial judge and appeared to result from a failure in the Legal Aid scheme to consider the question of legal representation at committal proceedings itself, either adequately or at all or in time.

22. The Court of Appeal also noted the importance attached to pausing for reflection and opportunities for people facing committal proceedings in another case, in Re G [2003] 2 FLR 58. In that case the problem was again slightly different in that contempt proceedings were taken at the court's own motion arising out of what had happened in court rather than pursuant to a hearing on notice.

23. In the submissions that have been developed in the present case before me the defendant points out that the right to legal representation in article 6 is not absolute in the sense that any proceedings conducted without it would be vitiated. A defendant indeed has a right to defend himself in criminal proceedings if he or she so wants to and there could be cases where a defendant's conduct is so unreasonable that the State is not obliged to ensure that he is supplied

with an endless succession of lawyers, all of whom are dismissed in turn, delaying the conclusion of the underlying proceedings to which representation is sought. In this case the claimant pertinently observes that the Court of Appeal noted that there was no evidence of intransigence on his part. However, the Ministry points out that there are limits to what a reasonable judge can ask before infringing another principle of fair trial, the right to respect for the privilege of communication with lawyers. In any event, although no formal declaration was granted by the Court of Appeal that the committal hearing breached the Human Rights Act, it is accepted that it is quite plain from its judgment that it considered it did and that is the tenor of its findings.

Events following the Court of Appeal judgment

24. To complete the sequence of events in this case mention should then be made of two further matters that occurred after the Court of Appeal's judgment. First, a few days after the judgment was delivered, on 27 March, this claimant committed another contempt of court when he armed himself with some eggs, came to the Royal Courts of Justice, entered a hearing where His Honour Judge Collins was dealing with another case and threw eggs at him. Rider J sentenced him to two months' imprisonment for that contempt. He then appealed promptly with the assistance of counsel and in due course the Court of Appeal varied that sentence to 28 days (see its judgment at [2007] EWCA Civ 465), the court perhaps recognising the frustration caused to the claimant by the delay in the subsequent overturning of the contempt decision.

25. Second, the claimant then at some point thereafter transferred to his present solicitors and in July 2007 obtained funding to consider the present proceedings. On 12 March 2008 it appears that a report was obtained from Dr Stuart Turner, a consultant psychiatrist, and he indicated in that report that the claimant probably developed an adjustment disorder with mixed anxiety and depressive features as a result of his sentence of imprisonment. It is convenient to address the issues arising in that report at this stage before considering the substance of the submissions.

26. In my judgment, the substance of the claimant's evidence as a whole, including the written report of Dr Turner, does not persuade me that it is more probable than not that he suffered psychiatric injury of the sort described, or of any sort, as a result of his period of detention. The claimant does not address the issue at all in his statement. Dr Turner acknowledged that the history was largely self reported and conflicted in part with what the claimant had said to another psychiatrist in a report that had been prepared for the contact proceedings. Further and pertinently, Dr Turner had not been made aware that there had been the intervening 14-day imprisonment pursuant to the 28-day order made by the Court of Appeal to which the claimant had been sentenced and served when he made his report.

The claim for damages for false imprisonment

27. Having considered the factual narrative of the case, I now turn to consider the claimant's submissions as set out at the start of this judgment. In my judgment, three of them can be disposed of quite summarily. First, the submission that this claim could proceed by way of a tort action for false imprisonment is quite hopeless. It has long been recognised that there is immunity for suit for a claim based on alleged errors made by a circuit judge of competent jurisdiction that results in the detention of the claimant in the absence of malice (see Sirros v Moore [1975] QB 118 and see further consideration of the question in Re McC [1985] 1 AC 528). That position

remains unaffected by the passing of the Human Rights Act, as has been made clear by the Court of Appeal in its decision in Ratra v The Department of Constitutional Affairs, unreported, [2004] EWCA Civ 731 at paragraph 17. The claimant accepts that that authority is binding on this court.

28. The passage of the Human Rights Act did not require rectification of the law of tort because insofar as the requirement of malice is inconsistent with the right to seek damages for detention arising in breach of article 5, then section 9(3) of the Human Rights Act enables the claimant to sue the Ministry, notwithstanding the Department's protection from liability in tort under section 2(5) of the Crown Proceedings Act 1947:

> "No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process."

29. I merely note that I am not concerned in this case with the question whether the scope of protection offered by section 2(5) of the CPA 1947 needs revisiting and in particular the extent to which it covers executive errors in enforcing a judicial order. I note that that was a question that was reserved for future argument by the Court of Appeal in the case of Quinland v Governor of Swaleside Prison and Others [2002] EWCA Civ 174. But insofar as article 5(5) of the ECHR requires the opportunity for people who are unlawfully detained to seek damages in the appropriate cases, the Human Rights Act provides it. Here it is apparent that at the outset His Honour Judge Collins had jurisdiction to determine the committal proceedings for contempt of court for breach of undertakings and court orders and there is no allegation that he had ever acted with any hint of malice.

The claim for mandatory damages for a violation of Article 6

30. I then turn to the second submission of the claimant. In my judgment, it is equally hopeless for the claimant to allege that any violation of an article 6(1) right results in a claim to damages for loss of a fair trial under the Human Rights Act.

31. First, the scheme of the Human Rights Act is inconsistent with that provision. Section 9(3) says:

> "In proceedings under this Act in respect of a judicial act done in good faith, damages may not be awarded otherwise than to compensate a person to the extent required by Article 5(5) of the Convention."

31. Secondly, section 8 (1) to 8(4), indicates that the question of just satisfaction generally is a question of discretion in the exercise of which the court must take into account the principles applied by the European Court of Human Rights under article 14(1) of the Convention. The case law of the court has made it plain that a violation of fair trial rights does not always require a remedy in damages. It is not necessary to lengthen this judgment with citation of authority for that proposition. It is in part reflected in the trio of Community charge cases to which further reference will be made in this judgment. As part of its case law the court notes that in the criminal context simply setting aside convictions by the Court of Appeal would not normally result in the payment of damages and it is pertinent to note that protocol 7 of the ECHR, articles 2 and 3, making provision for appellate review of criminal convictions, limits the duty to award

damages to a very narrow class of case.

32. Further, it is plain that the principal remedy for breach of fair trial rights is the exercise of a right of appeal to a competent Court of Appeal if the national legislative scheme happens to have one. The case law of the European Court looks back at the whole of the domestic proceedings, at trial and appeal, to determine whether there has been a breach of the fair trial rights and therefore has a look at both proceedings before reaching conclusions upon it. In my judgment, the Human Rights Act 1998 was very much drafted with those principles in mind and section 9(1) indicates:

> "Proceedings under section 7(1)(a) in respect of a judicial act may be brought only --
> (a) by exercising a right of appeal;
> (b) on an application (in Scotland a petition) for judicial review; or
> (c) in such other forum as may be prescribed by rules."

Therefore the drafter would have expected remedies and just satisfaction to be obtained in the appellate context first.

The date when the claimant first became a victim of a violation of his human rights

33. The third submission that I can deal with summarily, is that I do not accept that the claimant only became a victim within the meaning of section 7(1)(a) of the Human Rights Act when the Court of Appeal quashed his committal and sentence in March 2007. Indeed that would be a very odd result. His complaint is not of course with the Court of Appeal judgment that corrected the problem, but the decision of the court below and the consequent detention. General observation can be made that a victim is someone who suffers an infringement of his rights and is a victim from the date of the infringement alleged unless and until it is acknowledged and addressed by the competent authorities. I have drawn support for that broad proposition from Clayton and Tomlinson, the Law of Human Rights, OUP 2000, at paragraphs 22.20 to 22.43. That conclusion means that the present proceedings were instituted more than 12 months after the relevant date.

34. Section 7(5) of the Human Rights Act 1998 provides:

> "Proceedings under subsection (1)(a) must be brought before the end of --
> (a) the period of one year beginning with the date on which the act complained of took place; or
> (b) such longer period as the court or tribunal considers equitable having regard to all the circumstances,
> but that is subject to any rule imposing a stricter time limit in relation to the procedure in question."

35. That leaves for determination the two core submissions relied upon by the claimant that will need to be the subject of more detailed consideration, namely that he has been the victim of unlawful detention within the meaning of article 5(1) for which he is entitled to seek compensation under article 5(5) and that it is equitable in all the circumstances of the case to dis-apply a strict 12-month time limit.

Whether it is equitable to dis-apply the 12 month time limit

36. At this stage I now turn to consider the submission of the defendant Ministry on the question of time limits and whether it is equitable to extend time having regard to all the circumstances. The defendant's submissions in this respect can be summarised under three grounds.

37. The first submission was that there was procedural exclusivity by section 9(1)(a) of the Human Rights Act (already cited), namely that the question of damages for detention in breach of article 5 should have been raised before the Court of Appeal because it is required in respect of judicial acts to raise it by exercising a right of appeal and so it will be wrong to permit the matter to be raised now. I do not accept that submission. Section 9(1)(c) permits a claim also to be made in any forum that is permitted under the rules and, as the claimant observes, CPR 7.11(1) indicates that claims for judicial acts which are alleged to breach the Human Rights Act are to be instituted only in the High Court. The Court of Appeal is not the High Court and generally it has no original jurisdiction to determine a question that has not previously arisen in the court below. As has already been observed, section 9(4) of the Human Rights Act did not require the defendant Ministry to be adjoined in the appeal if no damages claim has been made.

38. The second submission made by the defendant is that it is an abuse or a quasi abuse or otherwise unfair to the Ministry of Justice for the claimant to have ventilated the claim for damages without having previously alerted the Ministry that he might do so whilst the appeal against the committal order was outstanding before the Court of Appeal. Such notice would have enabled the Ministry of Justice to consider whether to intervene in the Court of Appeal and make submissions on the relevant principles that might have influenced the terms in which judgment was reached. This submission appears, in my judgment, to be closely related to the earlier one and in principle suffers from the same defect that if notice was not required to be given as a matter of law it is difficult to see why it should be treated as an abuse or inherently unfair not to give it.

39. The Ministry could be affected by the terms of a Court of Appeal judgment on human rights in this field under the present regime for the giving of notice, even though no government department was there to help it with submissions and, as noted, the rules did not require every such claim to be notified. Under the procedures for contempt appeals, unopposed appeals can happen. It is of course within the power of the defendant Ministry to promote a change in the rules if it considers that such an outcome is unsatisfactory or disadvantageous to its own interests in the administration of justice. I recognize, of course, that a letter of intent to explain what is within contemplation is always useful and would have been relevant and could have been sent by the claimant if he had intended to claim damages at the time when the matter was pending before the Court of Appeal. It is unlikely that that was the issue that was considered by his legal team and that his mind or the mind of a legal team had been applied to that question at the time when the appeal was being ventilated.

40. The third submission is substantially on the particular merits of this case. In my judgment, the terms of section 7(5) indicate a broad assessment to be made on the equity of the case in all the relevant circumstances. It has been said that it is undesirable to restrict the statutory language by the creation of judicial particular considerations or by analogy with other statutes, including the Limitation Act, where a set of coherent requirements are set out. I note that Clayton and Tomlinson, in the work already cited, at paragraphs 22.61 and following note the similarity of the language between section 7(5) and similar provisions in the Race Relations Act and the Sex

Discrimination Act and therefore suggested that the case law of the EAT may be persuasive upon the question. Nevertheless I accept, despite that injunction that strict application of the case law on the Limitation Act is not appropriate, that it may be possible and relevant to cross-refer to the section 33(3) checklist, as Field J noted he did in the case cited to me of A v Essex County Council [2007] EWHC 162, also reported at [2007] HRLR 38 and the relevant paragraph is paragraph 121. Field J concluded that in consideration of the equity of the case the question of proportionality of benefit and burden was a relevant consideration (paragraph 123) and I agree.

41. There is very little evidence from the claimant by way of detailed explanation of the time it has taken to institute these proceedings in March 2008. It is some two and a half years after his release from detention and just within 12 months from the Court of Appeal decision. I accept that normally, absence of a coherent explanation, is likely to weigh heavily against claimants who are seeking an equitable remedy from the court.

Conclusions on extension of time

42. Despite the cogent nature of the defendant's submissions on this question, I conclude that if there were substantial merits in the claimant's claim to damages for breach of article 5, I would not be minded to dismiss this application simply on time grounds for the following reasons. First, the interrelationship between detention and damages is to some extent novel and unexplored territory. The Court of Appeal observed in the Ratra case that some of these questions are not easy ones. The claimant undoubtedly had to rely on professional advisers as to when, if, whether and how a damages claim may be brought. I do not consider that it would be in the interests of justice or proportionate that all those questions would be hived off to further satellite litigation in potential proceedings for negligence against any former advisers, and of course I make no comment as to whether there was any such negligence.

43. Second, as a matter of practicalities the question of damages could only arise when the Court of Appeal had considered the appeal and expressed themselves on the fair trial article 6 aspects of the question. His Honour Judge Collins' decision was within primary jurisdiction and therefore lawful unless and until overturned on appeal. The appeal was lodged fairly promptly, albeit, through no fault of the claimant's, not whilst he was still serving his sentence, and if all had gone well it might well have been expected that a judgment would have been given well within the 12 months set by the statute, enabling the claimant if so advised to then give notice of a damages claim and apply for legal aid to pursue it. It does not appear that it was his fault that the case took longer than this and indeed on the matters that the Court of Appeal considered it was not his fault.

44. Delays in the administration of justice by defective records or lack of resources are in fact the constitutional responsibility of the defendant Department, the Ministry of Justice. I am not of course saying that the Department caused any of the delays in the particular case but simply that it has constitutional responsibility for them. That is a factor that in my judgment would make it peculiarly inappropriate for them to rely upon this delay as a sufficient reason to defeat the claimant's case, certainly in the absence that they have suffered prejudice by reason of the delay, which is not alleged and unlikely to have occurred given that the facts are not in dispute.

45. The third reason I give is that I am conscious that the tort of false imprisonment, although it has been rejected, has a much longer limitation period, six years normally, possibly three years if one

is alleging personal injury has been caused by the detention. The principle of proportionality requires joinder of causes of action, if appropriate and possible, and the fact that consideration would need to be given of whether a false imprisonment claim had real prospects and is therefore part of the overall approach that any advisers would need to take. Moreover, given the holistic approach to remedies under section 8 of the Human Rights Act, in my judgment, in many cases it could be said that the court could not decide whether it was appropriate to grant remedies under section 8 until it had reached a conclusion as to whether the law of tort could reach the same area and provide a sufficient remedy in itself.

46. The Human Rights Act concept of remedies, following that of the Convention, is adjectival to the other provisions of domestic law and if domestic law touches the issue directly there may not be a need to look at remedies simply in the field of human rights. So applying the Convention principle, which is inherent through the case law of the court to which the domestic court is required to have regard in considering remedies, the principle of exhausting all available remedies may mean that often a longer period than 12 months is required before it is appropriate to lodge a damages only claim for redress for violation of rights.

47. The final consideration in the question of whether it is equitable to extend time would turn upon an examination of the merits of the claim itself and whether any damages would be awarded before reaching a final conclusion and therefore I defer further consideration of this question until the merits of the substantive claim have been addressed.

The claim under Article 5

48. Article 5(1)(a) and (b) of the European convention of Human Rights provides:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
> (a) the lawful detention of a person after conviction by a competent court;
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law."

49. The claimant's core submissions on his claim under article 5 were threefold. First, any unfair hearing that results in detention is a violation of article 5(1) because the hearing is not in accordance with the law, either the common law of fairness or the section 6(1) of the Human Rights Act statutory duty for the court to act compatibly with a person's human rights, including those under article 6. This is a slightly more modest reworking of the article 6 submission that had been already considered and summarily rejected. Again I reject this reworking of the submission for similar reasons to those already given, but more particularly for the principles spelt out in the trio of Community charge cases, to which I will shortly come.

50. The second submission upon which the claimant relied and the core submission only really emerged at the outset of this trial when the claimant had to consider the helpful and formidable citation of authority made by the defendant Ministry in its skeleton argument and in particular the case of Lloyd v United Kingdom, 6 July 2005 (I have not been referred to a reported version of that case), a decision of the Strasbourg Court. Following reference to that decision the claimant's final working of his submission upon this issue is that it is submitted that a gross and obvious

irregularity in committal proceedings and a flagrant disregard for an elementary principle which every court ought to obey renders the decision not in accordance with the law, therefore a violation of article 5(1) and therefore a kind of claim to which there is a right to seek damages under article 5(5).

51. The follow-up submission and the third of the claimant's submissions is that the unfairness in the present case met that standard. It is submitted that this was not a mere error of law or misjudgment by the learned judge but a fundamental failure to direct himself as to the need for legal representation and the principles of article 6 of the ECHR that should have governed his conduct of the hearing.

52. As I understand the Ministry's response, they accept that submission 2, gross and obvious irregularity, was the applicable test for violations of article 5(1) on the basis that competent proceedings were not in accordance with the law, but disputed that what had happened in the particular case met the standards therefore set out. The court has been greatly assisted by the authorities cited particularly in the Ministry's skeleton argument and it is reasonably clear that the trio of Community charge cases have long been considered as important in teasing out this question. Some of them have been referred to in the Law Commission's own summary on damages under the Human Rights Act (Law Commission Report 266, October 2000).

53. The first such case was the case of Benham v United Kingdom, a decision of the Strasbourg Court [1996] 22 EHRR 293. It concerned an unrepresented defendant who was committed to prison for nonpayment of the Community charge. The justices were endeavouring, or should have been endeavouring, to apply the 1989 Community Charge Regulations but their committal to prison was subsequently quashed by the Administrative Court as being defective. By this stage the claimant had served 11 days of his committal sentence before being released on bail.

54. The substance of the conclusions of the Strasbourg court can be summarised in the headnote at page 293 of the EHRR report under 1, "Right to Liberty and Security", as follows:

> "(a) This case falls to be examined under Article 5(1)(b) since the purpose of the detention was to secure the fulfilment of the applicant's obligation to pay the community charge owed by him. [39]
>
> "(b) The main issue to be determined is whether the disputed detention was 'lawful', including whether it complied with 'a procedure prescribed by law'. The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness. [40]
>
> "(c) It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5(1) failure to comply with domestic law entails a breach of the Convention, it follows that the European Court can and should exercise a certain power to review whether this law has been complied with. [41]
>
> "(d) A period of detention will in principle be lawful if it is carried out pursuant to a court

order. A subsequent finding that the court erred under domestic law in making the order will not necessarily retrospectively affect the validity of the intervening period of detention. [42]

"(e) It was agreed that the principles of English law which should be taken into account in this case distinguished between acts of a magistrates' court which were within its jurisdiction and those which were in excess of jurisdiction. The former were valid and effective unless or until they were overturned by a superior court, whereas the latter were null and void from the outset. In this regard there are similarities between the instant case and R v Manchester City Magistrates' Court, *ex parte* Davies (where the Court of Appeal found that the magistrates acted in excess of jurisdiction), but there are also notable differences. In the latter case the Court of Appeal held that the magistrates had failed altogether to carry out the enquiry required by law as to whether the debtor's failure to pay was the result of culpable neglect. In the instant case, however, the Divisional Court found that the magistrates had addressed themselves to this question, although their finding of culpable neglect could not be sustained on the available evidence. Against that background, it cannot be said with any degree of certainty that the judgment of the Divisional Court was to the effect that the magistrates acted in excess of jurisdiction within the meaning of English law. It follows that the European Court does not find it established that the order for detention was invalid, and thus that the detention which resulted from it was unlawful under national law. [43]-[46]

"(f) Nor does the court find that the detention was arbitrary. It has not been suggested that the magistrates acted in bad faith, or that they neglected the attempt to apply the relevant legislation correctly. The Court considers the question of the lack of legal aid to be less relevant to the present head of complaint than to that under Article 6. Accordingly, there is no violation of Article 5(1) of the Convention. [47]"

55. Paragraphs 45 through to 47 of the Strasbourg Court's decision in Benham are as follows:

"45. The Commission notes that it is a peculiarity of the domestic law of the United Kingdom that appeals against the decisions of inferior courts and administrative bodies and tribunals have developed in a way which frequently combines the question of whether the decision was right in law with the question whether the body had jurisdiction to take that decision. Thus in the case of MCC v Mullan the House of Lords found that the magistrates' failure to inform the juvenile defendant of his right to have, or at least to apply for, legal aid was a breach of a statutory condition precedent to jurisdiction to send him to a training school. The magistrates were liable in damages. Similarly, in R v Manchester City Magistrates' Court, *ex parte* Davies, the Court of Appeal found that a proper inquiry as to whether the ratepayer's failure to pay his rates was due to 'wilful refusal or culpable neglect' was a statutory condition precedent to the issue of a committal warrant for non-payment of rates. The magistrates were again liable in damages.

"46. In the present case the applicant initially made his appeal by way of case stated, and made an application for leave for judicial review only in order to be able to put his bail application before the High Court as soon as possible. This approach was vindicated by the Divisional Court which commented on the unsatisfactory nature of the bail procedure, and

dealt only with the appeal by way of case stated. The principles which can be drawn from the cases referred to above remain relevant for the present case, as Section 111 of the Magistrates' Court Act 1980 provides that a case may be stated where allegations are made that the decision was 'wrong in law or is in excess of jurisdiction'.

"47. If detention is to be lawful, including the observance of a procedure prescribed by law, it must essentially comply with national law and the substantive and procedural rules thereof."

56. It is pertinent then to observe that in this case the Strasbourg Court first considered the question of in accordance with the law by reference to domestic law and the common law of when were justices acting within their jurisdiction. It then went on to consider the principle in the light of the Strasbourg concept of in accordance with the law that governs the meaning of article 5(1), in particular it identified the guiding principle as the prevention of arbitrary detention. Although the court found that there had been a breach of article 6, there was no violation of article 5. A similar result follows in the case of Perks v United Kingdom [2000] 30 EHRR 33. Again in those cases where there were similar problems of committals by magistrates quashed by the Administrative Court, there was a breach of article 6 but not of article 5 and in particular the Strasbourg Court concluded that the decision of the justices could not be considered unlawful, that is to say not in accordance with the law, because they had not expressly considered alternatives to imprisonment, which was something which the regulations suggested they should do before making a committal.

57. In the case of Lloyd v United Kingdom, unreported (reference already given), the court were dealing with a large group of Community charge cases arising from a great many decisions of the UK courts quashing committals for nonpayment. The court affirmed at paragraph 103 that it accepted the principles spelt out in its earlier case law in Benham and Perks and rejected, as it had done earlier in the admissibility stage, the submission that those decisions were wrong. Nevertheless in the case of Lloyd the court did go on to define that the committals in most of this group of cases before them were not in accordance with the law and therefore were in breach of article 5(1) as well as article 6, for three broad reasons.

58. First, in some of the cases the court was satisfied, as the UK court had been satisfied, that there had been no proper means inquiry that had been conducted before the justices had committed and not conducting a means inquiry was equivalent to disobeying a mandatory requirement of domestic law imposed by a statute before a lawful committal could be imposed. That topic is dealt with at paragraph 108 of the court's judgment.

59. Secondly, a similar conclusion was reached in respect of failing to consider alternatives of custody. Here, by contrast to what had been relied upon in Perks, it was pointed out that section 82(4)(b) of the Magistrates' Courts Act 1980, read together with the regulations, required the court to consider alternatives to custody and committal could only be justified if there was no other way in which the debt could be enforced. The court were persuaded that with the statute in those terms that this was another class of a failure by a domestic court to obey a statutory prerequisite for its exercise of the power to commit. That is dealt with at paragraphs 109 to 113 of the court's judgment.

60. The third class of case in which the committals were found not to be in accordance with the law concerned, cases where the domestic court had found a failure to ensure that notice of the proceedings had been properly served. Paragraphs 115 and 116 of the European Court's decision in Lloyd and Others are as follows:

> "115. The Court recalls that this issue was declared admissible by the Commission in *Woolaghan v the United Kingdom* (no. 28787/95, decision of 2 July 1997), which was later settled by the Government. Furthermore, it has had careful regard to the case-law referred to in the consent orders, in the *Christison* (56429/00) application and set out in the 'Relevant domestic law' part of this judgment. It notes that the judges in those cases repeatedly described the notification to the applicant of the hearing as 'a matter of natural justice', and variously described the failure to give proper notification as 'perverse', 'a [flagrant] disregard for an elementary principle which every court ought to obey' and one which would render the magistrates' order 'vitiated' and the hearing 'fatally flawed'. In *ex parte Hannan* the judge apparently accepted counsel's submission that it constituted 'an act of judicial impropriety' (paragraph 77 above). Its reading of the case-law as a whole leads the Court to the view that it can determine with a degree of certainty that this issue amounted to a 'gross and obvious' irregularity of procedure within the meaning of the *McC v Mullan* case (paragraph 32 above).
>
> "116. The Court notes further that failing to ensure that an applicant had proper notice of the hearing necessarily prevented that applicant from making any representations at, or in respect of, the hearing (including why the warrant should not be issued, whether in his/her absence or otherwise, and any change in circumstances since the initial hearing)."

61. I accept that in those passages the court was using the language of the United Kingdom courts, and in particular the language of Lord Bridge in Re McC, as a guide to the Strasbourg concept of when a judicial decision by a court addressing something that it had power to address nevertheless was arbitrary or not in accordance with the law because of the way they went about it. However, in addition to those three classes of case where the Strasbourg court had found that the committals were not in accordance with the law and arbitrary, there was one class of case where it concluded that the committal, although it did not meet the standards of article 6, nevertheless was not a violation of article 5(1). That was a class of case where persons who had been committed were under 21 and there was a statutory prohibition under section 3 of the Criminal Justice Act 1982 from imposing a term of imprisonment on an offender under 21 where that person was not given the opportunity to be legally represented. The court were persuaded that that did not directly apply to committal proceedings by reason of the legislation, although it was a principle to which account could be taken in the general requirement of procedural fairness. Nevertheless the court concluded that it was not a gross or obvious irregularity in the exceptional sense indicated by the case law and therefore that committal was not contrary to article 5(1).

62. It remains the case that in that important decision of Lloyd the court seemed to have equiparated arbitrary with the earlier case law from the House of Lords as to when justices were acting within their jurisdiction and no doubt that is a powerful pointer to cases where article 5(1) standards are not met, although it is pointed out that clearly the notion in article 5(1) cannot be solely dependent upon the state of domestic UK case law in this somewhat erudite part of the law of tort.

63. In the case of Saadi v United Kingdom, a decision of the Grand Chamber of the European Court of Human Rights, delivered on 29 January 2008, further guidance of a general nature is given as to the meaning of the notion of arbitrary detention in the context of article 5:

> "69. One general principle established in the case-law is that detention will be 'arbitrary' where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities (see, for example, *Bozano v France*, judgment of 18 December 1986, Series A no. 111; *Conka v Belgium*, no. 51564/99, ECHR 2002-I). The condition that there be no arbitrariness further demands that both the order to detain and the execution of the detention must genuinely conform with the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5 § 1 (*Winterwerp*, cited above, § 39; *Bouamar v Belgium*, judgment of 29 February 1988, Series A no. 129, § 50; *O'Hara v the United Kingdom*, no. 37555/97, § 34, ECHR 2001-X). There must in addition be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention (see the above-mentioned *Bouamar* judgment, § 50; *Aerts v Belgium*, judgment of 30 July 1998, Reports 1998-V, § 46; *Enhorn v Sweden*, no. 56529/00, § 42, ECHR 2005-I).
>
> "70. The notion of arbitrariness in the contexts of sub-paragraphs (b), (d) and (e) also includes an assessment whether detention was necessary to achieve the stated aim. The detention of an individual is such a serious measure that it is justified only as a last resort where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained (see *Witold Litwa*, cited above, § 78; *Hilda Hafsteinsdóttir v Iceland*, no. 40905/98, § 51, 8 June 2004; *Enhorn v Sweden*, cited above, § 44). The principle of proportionality further dictates that where detention is to secure the fulfilment of an obligation provided by law, a balance must be struck between the importance in a democratic society of securing the immediate fulfilment of the obligation in question, and the importance of the right to liberty (see *Vasileva v Denmark*, no. 52792/99, § 37, 25 September 2003). The duration of the detention is a relevant factor in striking such a balance (ibid., and see also *McVeigh and Others v the United Kingdom*, applications nos. 8022/77, 8025/77, 8027/77, Commission decision of 18 March 1981, DR 25, pp. 37-38 and 42).
>
> "71. The Court applies a different approach towards the principle that there should be no arbitrariness in cases of detention under Article 5 § 1(a), where, in the absence of bad faith or one of the other grounds set out in paragraph 69 above, as long as the detention follows and has a sufficient causal connection with a lawful conviction, the decision to impose a sentence of detention and the length of that sentence are matters for the national authorities rather than for the Court under Article 5 § 1 (see *T v the United Kingdom* [GC], no. 24724/94, § 103, ECHR 2000-I ; and also *Stafford v the United Kingdom* [GC], no. 46295/99, § 64, ECHR 2002-IV).
>
> "72. Similarly, where a person has been detained under Article 5 § 1(f), the Grand Chamber, interpreting the second limb of this sub-paragraph, held that, as long as a person was being detained 'with a view to deportation', that is, as long as 'action [was] being taken with a view

to deportation', there was no requirement that the detention be reasonably considered necessary, for example to prevent the person concerned from committing an offence or fleeing (*Chahal*, cited above, § 112). The Grand Chamber further held in *Chahal* that the principle of proportionality applied to detention under Article 5 § 1(f) only to the extent that the detention should not continue for an unreasonable length of time; thus, it held (§ 113) that 'any deprivation of liberty under Article 5 § 1(f) will be justified only for as long as deportation proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible ...' (and see also *Gebremedhin [Gaberamadine] v France*, no. 25389/05, § 74, ECHR 2007-...).

"73. With regard to the foregoing, the Court considers that the principle that detention should not be arbitrary must apply to detention under the first limb of Article 5 § 1(f) in the same manner as it applies to detention under the second limb. Since States enjoy the right to control equally an alien's entry into and residence in their country (see the cases cited in paragraph 63 above), it would be artificial to apply a different proportionality test to cases of detention at the point of entry than that which applies to deportation, extradition or expulsion of a person already in the country.

"74. To avoid being branded as arbitrary, therefore, such detention must be carried out in good faith; it must be closely connected to the purpose of preventing unauthorised entry of the person to the country; the place and conditions of detention should be appropriate, bearing in mind that 'the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country' (see *Amuur*, § 43); and the length of the detention should not exceed that reasonably required for the purpose pursued."

Conclusions in respect of the claim under Article 5

64. In the light of all the principles identified above and all the material before me I now have to consider whether the claimant's detention pursuant to the order of His Honour Judge Collins was so gross and obvious an irregularity within the meaning of paragraph 115 of the Lloyd judgment as to be not in accordance with the law. Despite the criticisms already noted, made by the Court of Appeal when the decision was reversed, I reach the conclusion that the decision cannot be so described or castigated.

65. I reach that conclusion for the following reasons.

(1) His Honour Judge Collins was a court of competent jurisdiction entitled to consider the question of whether the claimant should be committed for contempt on his wife's application.

(2) Proper notice of the hearing and the substance of the details of the application for committal had been given in the application and so the claimant was not taken by surprise by either.

(3) The record of proceedings does not reveal, so far as I can detect, any application by the claimant off his own bat to adjourn the proceedings for legal representation. Of course the court has its own duties to consider the fairness of the matter, but the claimant was an adult, he was not under a disability and to some extent therefore, applying the analogous principles with those under 21 who are unrepresented in paragraph 114 of the Lloyd case, the present case would appear somewhat weaker than that case.

(4) There was no failure by His Honour Judge Collins to follow statutory prerequisite to

committal. Contrast the Community charge cases where in the end violations of article 5(1) were found because of a failure to consider or apply a statutory restraint to committal, namely, a means inquiry or the consideration of alternative remedies. The general requirement to act in accordance with article 6 that is imposed by section 6(1) of the Human Rights Act is, in my judgment, not the same as a precise rule forbidding committal unless some preexisting condition is complied with. Similarly the terms of the practice direction, to which reference has already been made, were in general terms and did not impose a precise prior obligation with respect to either legal representation or non-joinder of committal with other issues.

(5) At the stage when the matter was before His Honour Judge Collins there was no unambiguous authority from the Court of Appeal that committal of an unrepresented defendant in Family proceedings is always a breach of article 6(1). The strong terms in which the court expressed itself make the position now clear and a court that in the future were to commit an unrepresented defendant without any express judicial consideration of whether the matter could be adjoined to enable representation to take place may well be considered to be guilty of infringing what the courts have now imposed as a test equivalent to a statutory condition precedent to a lawful committal. Although there is a danger of troubling this judgment with analogies that will lengthen it and distort it, in my judgment, some regard can be had to the European Community principles of *acte claire* where it is only after the European Court of Justice has authoritatively declared the law and the meaning of the regulation to be what it is that liability for damages for breach of the regulation is likely to occur

(6) There was no hint of malice or bad faith by the judge. The wife's allegations were of serious harassing conduct and any litigant before the courts and any participant in Family proceedings before the court was entitled to the protection of the court. The court would also be concerned to ensure that its orders were obeyed and, even if the undertaking was in over broad terms, what was apparently before the court was something much stronger than mere communication but abusive contact. The committal order was rationally connected to the purpose of enforcement of the earlier orders, as the court in Saadi has made plain, is a feature of whether something is arbitrary or not and therefore would not fall foul of that principle of ECHR law.

(7) The period of the committal was substantial given that it appears that no actual assault was found proved. It may very well be that with representation a significantly shorter period would have been imposed, but an excessive sentence does not, in my judgment, render the detention arbitrary. It of course is open to appeal and in cases of committal there is an appeal as of right and any court considering an appeal is vested with the opportunity to grant bail if it thought fit but more practically to order expedition to address what it considers may be a wrongful sentence. It may very well be that the defendant Ministry will need to consider whether prison Legal Aid schemes or the responsibilities imposed upon the Legal Services Commission are sufficiently finely tuned as at present to assist defendants in person to lodge notices of appeal so that arguable errors can be brought before the courts promptly. But the court has insufficient information to make any observation as to whether there is a defect in practice in this case. It is possible, however, for litigants in person to launch appeal proceedings of some sort promptly and in most cases that will be the proper way of addressing potentially excessive sentences.

(8) The claimant submitted that what has really gone wrong was the failure of the judge to direct himself in accordance with article 6 and the three principal criticisms made by the Court of Appeal all suggest that this indeed was an erroneous exercise of judgment by the trial judge. But erroneous exercises of judgment do not make the decisions given by judges unlawful or not in accordance with the law or arbitrary in the sense indicated in the article 5(1) case law.

66. I therefore find that this claim fails upon the merits. If I had reached a contrary conclusion it would have been necessary to consider what the causal nexus between the unfairness and the detention resulting from the unfairness would have been in assessing compensation. I accept the claimant's submission to this extent: where there has been an unlawful detention that has occurred in breach of article 5(1), it would be necessary and appropriate to visit that by some measure of damages, however modest that might be, although article 5(5) is procedural, the right to seek, rather than *ex facie* a right to be granted a measure of damages. Different issues may arise where the violation concerned is of the procedural rights under article 5(4) and when the need for a causal nexus between the deprivation of the procedural right and what the impact would have been is a more controversial and pertinent question.

67. But looking at all the material as a whole, in the light of my earlier conclusions as to the alleged psychiatric injury, and making a broad assessment of the picture as best I can, in my judgment, I conclude that if the contempt proceedings had been separated off from the contact order and if the claimant had been represented by legal advisers before His Honour Judge Collins a finding that he was in contempt was nevertheless inevitable on a number of the grounds alleged on the conduct complained of. However, I conclude that, even if it is more probable that a period of custody was the likely outcome, it would have been a significantly shorter period than that to which he was sentenced and would have been something in the order of 14 days' detention and he would not have served the six weeks that he did actually serve. On those facts, making the assessment of the causal nexus as best I can, I would have awarded on an equitable basis damages in the sum of £6,000. In doing so I have reminded myself of the principles set out in the case of Anufrijeva [2004] QB 1124.

Overall Conclusion

68. However, for the reasons given this claim fails and in the light of the decision on the merits I finally revisit whether it is equitable to extend the time limit and, for the reasons I have previously given, if there had been merits in the case I would have extended time. Because I find that the merits are as I have found them to be, I would not have extended time in this case and so the claim fails on that limb as well. The application is dismissed.